

Harrowby TV, Inc.
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Aspen, Colorado 81612

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The Honorable Andrew C. Barrett
Federal Communications Commission
1919 "M" Street, N.W. Room 826, Stop Code 0100
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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RE: Prejudicing Applicants' Rights in Doc. 93-252

Dear Commissioner Barrett:

Harrowby TV, Inc. (HTV) is a financially qualified, minority-owned SMR licensee with a successful track record as an owner/operator of wireless communications firms¹. HTV began preparing and filing SMR applications approximately one year ago. While HTV has already received a number of SMR licenses, it was horrified to read the Commission's August 9th *News Release* (Report DC-2638) and to learn from its legal counsel that the Commission is now suspending the processing of all pending 800 MHz SMR applications and is considering returning those applications. Such an unconscionable abridgment of the rights of SMR applicants with pending applications would emasculate the rudiments of justice and fair play.

HTV begs the Commission to "wear the hats" of the likely hundreds of small entrepreneurs who (during the past year or so) have (1) spent tens or hundreds of thousands of dollars on SMR applications, (2) expended countless efforts to prepare and file thousands of applications (in the aggregate), (3) relied in good faith on the Commission's rules, policies and case precedents, and upon their Constitutional rights. These many applicants were effectively enticed by the Commission to incur these costs. For the Commission to now return those applications — even with a refund of filing fees, engineering, legal and other costs, as difficult as all of this would be to calculate — is manifestly unfair and contrary to the law. There is no way for the Commission to make amends for the value to be lost by so many citizens.

Nor does the Commission need to do this to accomplish its wide-area licensing scheme, as pending applications (and the eventual licenses

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and systems that should flow therefrom) could be treated in the same manner as currently existing SMR operators.

Clearly, if the Commission returns pending applications, it is doing so for one reason and one alone: to extract more money from the public. There are serious legal questions concerning the applicability of auction authority to non-competing SMR applications, and the use of auctions to effectively prevent the participation of small businesses and minorities in the SMR-DSMR industry — not to mention the inequities and injustice that such a belated, ex post facto reversal of the Commission's rules would impose on a host of innocent applicants.

The Commission is respectfully urged not should to return any pending 800 MHz SMR applications, and to adopt changes in rules on a prospective basis only.

Respectfully submitted,



Cynthia Kohart, V.P. of Harrowby TV, Inc.

¹ HTV is a 100% female-owned entity. The sole owner of HTV was a prior sole owner of two cellular telephone systems, which she built and operated for approximately five years. As such, HTV's principal has both the assets and experience to be a serious SMR-DSMR builder and operator.